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**JUN 04 2019**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

Clerk, U.S. Courts  
District of Montana  
Missoula Division

**SCOTT C. ANDERSON,**

**Petitioner,**

**vs.**

**MONTANA BOARD OF PARDONS  
AND PAROLE; ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,**

**Respondents.**

**CV 19-32-H-DLC-JTJ**

**ORDER**

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations on May 14, 2019, recommending that the Court dismiss Petitioner Scott C. Anderson's petition brought under 28 U.S.C. § 2254 and deny a certificate of appealability. (Doc. 4.) Anderson failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*,

856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendations (Doc. 4), the Court finds no clear error in Judge Johnston's recommendation that Anderson's petition be dismissed without prejudice to enable Anderson to first exhaust state remedies. Judge Johnston reasonably determined that Anderson's federal habeas petition is procedurally barred unless and until Anderson seeks habeas relief in the Montana state court system. *See* 28 U.S.C. § 2254(b)(1). Because there is no reasonable dispute regarding whether Anderson failed to exhaust state remedies, there is no clear error in Judge Johnston's recommendation to deny a certificate of appealability. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Anderson has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS ORDERED:

(1) Judge Johnston's Findings and Recommendations (Doc. 4) is ADOPTED IN FULL;

(2) Anderson's Petition (Doc. 1) is DISMISSED as unexhausted;

(3) A certificate of appealability is DENIED; and

(4) The Clerk of Court shall enter by separate document a judgment in favor of dismissal.

DATED this 4<sup>th</sup> day of June, 2019.



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Dana L. Christensen, Chief Judge  
United States District Court